

AMENDED IN ASSEMBLY MAY 2, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3125**

**Introduced by Assembly Member Hawkins**

February 23, 1996

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An act to ~~add Section 50461 to~~ amend Section 65583.1 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 3125, as amended, Hawkins. Housing *elements*: ~~Department of Housing and Community Development:~~ ~~actions to enforce compliance~~ *identification of adequate housing sites.*

*Existing law requires each city, county, and city and county to adopt for its jurisdiction, according to specified deadlines, a general plan that includes certain mandatory elements, including a housing element.*

*Existing law requires the Department of Housing and Community Development to evaluate each housing element for consistency with state law including, among other things, a program setting forth a 5-year schedule of actions the local government is undertaking or intends to undertake to achieve the goals of the housing element that includes the identification of sites to be made available to encourage the development of a variety of types of housing for all income levels. It permits the department to allow a local government to identify adequate sites for this purpose by a variety of methods, as specified.*

*This bill would authorize a locality to identify up to 50% of its site identification requirements for any income category from sites converted from nonaffordable to affordable housing due to committed assistance from the local government, sites in need of substantial rehabilitation, as specified, and sites providing housing for certain households, as specified.*

~~Under existing law, the Department of Housing and Community Development is authorized to administer programs relating to housing for persons or households of low or moderate income. Pursuant to this authority, the department administers various loan and grant programs for housing and enters into agreements whereby it retains interests in real property to secure the repayment of loans. In addition, the department may impose certain operating requirements, as specified, on persons who receive loans or grants as a condition of receiving the loan or grant. Existing law, known commonly as the “one form of action rule,” generally states that there can be but one form of legal action for the recovery of a debt or enforcement of any right secured by a mortgage upon real property.~~

~~This bill would provide that if the department, prior to foreclosing on any collateral provided by a borrower, takes any action against a borrower to enforce compliance with operating requirements, as specified, in the agreement between the borrower and the department, that action shall not constitute an action for purposes of the “one form of action rule.” However, this bill would provide that any foreclosure action taken by the department pursuant to the same agreement would constitute an action for purposes of the “one form of action rule.”~~

~~This bill would declare that these provisions do not constitute a change in, and are declaratory of, existing law.~~

~~This bill would provide that the prevailing party in any legal action taken in connection with these agreements would be entitled to costs and reasonable attorney’s fees, as determined by the court.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes no. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 50461 is added to the Health and~~

*SECTION 1. Section 65583.1 of the Government Code is amended to read:*

*65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for consistency with state law, may allow a local government to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. Nothing in this section reduces a local government's responsibility to identify, by income category, the total number of sites for residential development as required by this article.*

*(b) (1) To meet its requirement to identify adequate sites pursuant to paragraph (3) of subdivision (a) of, and paragraph (1) of subdivision (c) of, Section 65583, a locality may also identify up to 50 percent of its site identification requirements for any income category within one or more of the following categories:*

*(A) Sites located within the jurisdiction of the local government that shall be converted through direct financial or rental assistance from nonaffordable to affordable housing, due to committed assistance from the local government. No existing housing units identified pursuant to this subparagraph shall be occupied by very low and low-income households. For the purpose of this paragraph, "rental assistance" shall mean a net increase in housing units within the jurisdiction made available by reason of that assistance at affordable housing cost to low- and very low income households through the provision of rental assistance, provided that the units are not presently available at affordable housing cost to lower income households, the units are in decent, safe, and sanitary condition, and the rental charged on these units is not in excess of 120 percent of the median of the rents charged in that city or county.*

1 For the purpose of this paragraph, “direct financial  
2 assistance” shall mean a net increase in ownership  
3 housing made available to low- and moderate-income  
4 households by reason of the assistance, provided that the  
5 housing does not exceed 140 percent of the median price  
6 for housing in that city or county at the time the assistance  
7 is made.

8 (B) Sites located within the jurisdiction of the local  
9 government, that are in need of substantial rehabilitation,  
10 and that shall be rehabilitated due to committed  
11 assistance from the local government. The rehabilitation  
12 shall not require a public subsidy that exceeds 150 percent  
13 of the average cost per unit of rehabilitating comparable  
14 units elsewhere in the jurisdiction. For purposes of this  
15 subparagraph, “substantial rehabilitation” shall mean a  
16 net increase in the rehabilitation of existing housing units  
17 that are determined by the local government to be vacant  
18 and unfit for human habitation because violations are so  
19 extensive and of such a nature that the health and safety  
20 of a resident is substantially endangered and have existed  
21 for at least 90 continuous days, and which the jurisdiction  
22 causes, through committed assistance, to be rehabilitated  
23 and made available at affordable housing cost to low- and  
24 very low income households.

25 (C) Sites located within the jurisdiction of the local  
26 government that shall be converted from nonaffordable  
27 to affordable due to acquisition. For the purposes of this  
28 subparagraph, “acquisition” shall mean the purchase of  
29 housing units, due to committed assistance, to be made  
30 available at affordable housing costs to very low income  
31 households, provided that the units are not presently  
32 available at affordable housing cost to low- or very low  
33 income households, the units are not presently occupied  
34 by low- or very low income households, the units are in  
35 decent, safe, and sanitary condition, and the acquisition  
36 price is not greater than 120 percent of the median price  
37 for housing units.

38 (D) If, at the end of the five-year housing element  
39 planning period, any sites have not been assisted through  
40 substantial rehabilitation, acquisition, direct financial

1 assistance, or rental assistance, the council of  
2 governments, or the department where there is no  
3 council of governments, shall add the number of sites  
4 identified to be substantially rehabilitated, acquired, or  
5 the subject of direct financial assistance or rental  
6 assistance but that were not rehabilitated, acquired, or  
7 provided with direct financial assistance or rental  
8 assistance to that jurisdiction's regional fair share  
9 allocation in the next five-year planning period of the  
10 jurisdiction, and, unless this failure was beyond the  
11 reasonable control of the jurisdiction, the jurisdiction  
12 shall be precluded from identifying the percentage of  
13 sites pursuant to subdivision (b) in the next five-year  
14 planning period of the jurisdiction equal to the  
15 percentage the nonrehabilitated units, nonacquired  
16 units, or units not provided direct financial assistance or  
17 rental assistance constituted of the total obligation in the  
18 existing five-year plan.

19 (2) (A) For purposes of paragraph (1) of subdivision  
20 (b), "committed assistance" shall include direct financial  
21 assistance, rental assistance, substantial rehabilitation, or  
22 acquisition of existing housing, and shall mean the  
23 jurisdiction has identified specific units for assistance,  
24 entered into a legally enforceable obligation, and  
25 allocated funds pursuant to an adopted resolution by the  
26 local government for the purpose of providing the  
27 required affordable housing. Identification of specific  
28 units for assistance, in the case of rental assistance, shall  
29 mean identification of at least as many specific potential  
30 units as there are households receiving rental assistance.

31 (B) Any rental assistance, acquired units, or  
32 substantially rehabilitated units shall be made available at  
33 affordable housing cost to lower income households, or in  
34 the case of direct financial assistance to low- and  
35 moderate-income households, throughout the duration of  
36 the five-year planning cycle, or if the assistance or units  
37 are proposed to be made available for a period less than  
38 the entire duration of the five-year planning cycle, the  
39 site shall qualify only in the proportion that its duration  
40 bears to the cycle.

1 (C) To identify sites pursuant to subparagraphs (A),  
2 (B), and (C) of paragraph (1) of subdivision (b), a city  
3 or county shall show a net increase in the total number of  
4 units assisted by these programs from the previous  
5 planning period.

6 (3) Sites that would qualify as permanent housing for  
7 households that are available for occupancy by  
8 households within the planning period and are not  
9 scheduled within the planning period to be demolished  
10 or converted to nonresidential use, shall not be  
11 disqualified from being designated as an adequate site  
12 because the site is located on a military base that is  
13 undergoing closure or conversion as a result of action  
14 pursuant to the Defense Authorization Amendments and  
15 Base Closure and Realignment Act (Public Law 100-526),  
16 the Defense Base Closure and Realignment Act of 1990  
17 (Public Law 101-510), or any subsequent act requiring  
18 the closure or conversion of a military base.

19 (c) To meet its requirements to identify adequate sites  
20 pursuant to paragraph (3) of subdivision (a) of Section  
21 65583 and paragraph (1) of subdivision (c) of Section  
22 65583, a locality may also identify sites that will provide  
23 a net increase in nontemporary affordable or senior  
24 housing units for households, including all of the  
25 following: farmworker housing; congregate care  
26 facilities, including group living accommodations where  
27 each living quarter has direct access from outside the  
28 building or through a common hall without regard to the  
29 type of dining facilities available and community-based  
30 homes; and housing developments intended to be  
31 exclusively for senior citizens.

32 ~~Safety Code, to read:~~

33 ~~50461. (a) Notwithstanding any other provision of~~  
34 ~~law, if, prior to foreclosing on any collateral provided by~~  
35 ~~a borrower, the department institutes or has completed~~  
36 ~~any legal proceeding or takes any action against the~~  
37 ~~borrower to enforce compliance with the obligations set~~  
38 ~~out in subdivision (b), that remedy or action shall not~~  
39 ~~constitute an action within the meaning of subdivision (a)~~  
40 ~~of Section 726 of the Code of Civil Procedure, or in any~~

~~1 way constitute a violation of the intents and purposes of  
2 Section 726 of the Code of Civil Procedure, or constitute  
3 a money judgment for a deficiency or a deficiency  
4 judgment within the meaning of Sections 580a, 580b, or  
5 580d, or subdivision (b) of Section 726 of the Code of Civil  
6 Procedure. However, the above referenced provisions of  
7 the Code of Civil Procedure shall apply to any judicial  
8 proceeding instituted, or nonjudicial foreclosure action  
9 taken, by the agency to collect the principal or interest  
10 due on the mortgage loan with the housing sponsors or  
11 borrowers, or both.~~

~~12 (b) (1) Subdivision (a) shall apply to the obligations  
13 of the housing sponsors, borrowers, or both, to perform  
14 requirements, as may be included in agreements relating  
15 to projects funded by the department to do any of the  
16 following:~~

~~17 (A) Establish schedules of rents, operating budgets,  
18 tenant standards, tenant selection procedures, and terms  
19 of occupancy and to provide annual reports, audits, or  
20 other services as required by agreements with the  
21 department.~~

~~22 (B) Permit the inspection of the premises, books, and  
23 records.~~

~~24 (C) Supervise the day to day operation and  
25 maintenance of the housing financed by the department,  
26 and to pay the fees to defray the costs thereof, as required  
27 by agreements with the department.~~

~~28 (D) Comply with the provisions of federal, state, or  
29 local laws and ordinances, the rules and regulations of the  
30 department, or with the terms of any contract, regulatory  
31 agreement, or other agreement with the department.~~

~~32 (E) Adhere to any limitation on distributions, as  
33 required by agreements with the department, or as  
34 required by federal or state law.~~

~~35 (F) Turn over managerial or financial control to the  
36 department, as required by agreements with the  
37 department, or as required by federal or state law.~~

~~38 (G) Certify development costs, as required by  
39 agreements with the department, or as required by  
40 federal or state law.~~

1 ~~(H) Remit earned surplus to the department, as~~  
2 ~~required by agreements with the department, or as~~  
3 ~~required by federal or state law.~~

4 ~~(I) Deposit funds to reserve accounts and properly~~  
5 ~~withdraw funds from reserve accounts, as required by~~  
6 ~~agreements with the department, or as required by~~  
7 ~~federal or state law.~~

8 ~~(2) For the purposes of this section, agreements~~  
9 ~~relating to projects funded by the department include,~~  
10 ~~but are not limited to, the following:~~

11 ~~(A) Any agreement relating to the development,~~  
12 ~~construction, or rehabilitation of the project or property.~~

13 ~~(B) Any agreement regulating the ongoing operation~~  
14 ~~or occupancy of the project or property.~~

15 ~~(c) Notwithstanding any other provision of law, the~~  
16 ~~prevailing party in any action instituted pursuant to this~~  
17 ~~section shall be awarded costs and reasonable attorney's~~  
18 ~~fees in an amount to be determined in the court's~~  
19 ~~discretion.~~

20 ~~SEC. 2. The Legislature finds and declares that the~~  
21 ~~addition of Section 50461 to the Health and Safety Code~~  
22 ~~made by this act does not constitute a change in, but is~~  
23 ~~declaratory of, existing law. This addition is intended to~~  
24 ~~clarify that the remedies provided to the Department of~~  
25 ~~Housing and Community Development to enforce the~~  
26 ~~provisions of its various agreements were intended to be~~  
27 ~~available to the department without regard to the~~  
28 ~~provisions of Sections 580a, 580b, 580d, and 726 of the~~  
29 ~~Code of Civil Procedure, in order that the department~~  
30 ~~could expeditiously and efficiently enforce its mandates~~  
31 ~~for the protection of public funds, and ensure that the~~  
32 ~~stock of low- and moderate-income housing that its loan~~  
33 ~~programs provide is maintained. However, these~~  
34 ~~amendments are not intended to deny housing sponsors~~  
35 ~~or borrowers the protection of these sections when the~~  
36 ~~department seeks to recover a judgment for the principal~~  
37 ~~and interest due on its promissory note with the housing~~  
38 ~~sponsors, or borrowers, or both.~~